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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH GABRIEL CALAVANO,

Defendant and Appellant.

H042950  
(Santa Clara County  
Super. Ct. No. C1496622)

Defendant Joseph Calavano was convicted of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)).<sup>1</sup> Defendant was sentenced to prison, and was ordered to pay restitution to the victim for the costs associated with installing a security system in her home.

On appeal, defendant argues that the court erred in imposing the restitution order, because security system costs are not permitted under section 1202.4, subdivision (f)(3)(J).

**STATEMENT OF THE FACTS AND CASE**

During an argument on October 26, 2014, defendant attacked his then co-habitant, Daniella L. by standing behind her and wrapping his right arm around her neck.

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<sup>1</sup> All further statutory references are to the Penal Code.

Defendant tightened his grip, and eventually, Daniella lost consciousness and fell to the ground.

A forensic nurse examiner at Valley Medical Center and Stanford Hospital, testified that Daniella's post-attack symptoms were consistent with strangulation.

Defendant was charged with assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)) with the personal infliction of great bodily injury (§ 12022.7, subd. (e)). On May 26, 2015, defendant pleaded no contest to the assault charge, and the personal infliction of great bodily injury enhancement was dismissed. The trial court sentenced defendant to the low term of two years in state prison and ordered him to pay \$1,086.76 in restitution to the victim for the costs associated with the installation of a security system in her home. On October 29, 2015, appellant filed a timely notice of appeal.

### **DISCUSSION**

Defendant asserts that the trial court erred when it ordered him to pay restitution to the victim in the amount of \$1,086.76 for costs associated with the installation of a home security system. He argues that restitution for these costs was not permitted under the restitution provisions of the Penal Code.

The California Constitution provides that crime victims have a right to restitution when they suffer losses as a result of criminal activity. (Cal. Const., art. I, § 28, subd. (b)(13)(A) & (B); see *People v. Giordano* (2007) 42 Cal.4th 644, 652 (*Giordano*) [discussing former Cal. Const., art. I, § 28, subd. (b) ].) This constitutional mandate is implemented by section 1202.4, which provides in pertinent part: “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.” (§ 1202.4, subd. (f); see *id.*, subd. (a)(1); *Giordano*,

*supra*, 42 Cal.4th at p. 656.) “The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so . . . .” (*Ibid.*)

A trial court’s restitution order is ordinarily reviewed for abuse of discretion. (*Giordano, supra*, 42 Cal.4th at p. 663.) The abuse of discretion standard “ ‘asks in substance whether the ruling in question “falls outside the bounds of reason” under the applicable law and the relevant facts [citations].’ [Citation.] Under this standard, while a trial court has broad discretion to choose a method for calculating the amount of restitution, it must employ a method that is rationally designed to determine the surviving victim's economic loss.” (*Id.* at pp. 663-664.) However, “ ‘[t]here is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action. [Citation.]’ [Citation.]” (*People v. Millard* (2009) 175 Cal.App.4th 7, 26-27.)

In support of his argument that the restitution order was not proper in this case, defendant cites section 1202.4, subdivision (f)(3)(J), which provides restitution in the following circumstances: “Expenses to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.” Defendant argues that because he was not convicted of a violent felony within the meaning of Penal Code section 667.5, subdivision (c), the court did not have authority to order him to pay restitution for costs associated with the installation of a home security system.

While section 1202.4, subdivision (f)(3)(J) specifically provides for security system costs when a defendant is convicted of a violent felony, the fact that defendant was not convicted of a violent felony does not *preclude* the court from ordering restitution for those costs under the general provisions of the statute.

Restitution under section 1202.4, subdivision (f)(3), “shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant’s criminal conduct. . . .” Here, the cost to install a security system was an economic loss the victim incurred as a result of defendant’s crime.

Moreover, the law is clear that losses for purposes of victim restitution are not limited to those enumerated in section 1202.4 and must be construed broadly and liberally to compensate a victim for any economic loss which is proved to be the direct result of the defendant's criminal behavior. (*People v. Moore* (2009) 177 Cal.App.4th 1229, 1232.) “Because the statute uses the language “including, but not limited to” these enumerated losses, a trial court may compensate a victim for any economic loss which is proved to be the direct result of the defendant’s criminal behavior, even if not specifically enumerated in the statute. [Citation]” (*People v. Keichler* (2010) 129 Cal.App.4th 1039, 1046.)

The restitution order in this case was authorized by section 1202.4, subdivision (f), and was not an abuse of discretion.<sup>2</sup>

#### **DISPOSITION**

The order is affirmed.

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<sup>2</sup> We received defendant’s letter regarding the recent Fourth District Court of Appeal decision in *People v. Salas* (2017) 9 Cal.App.5th 736. We considered that opinion in the disposition of this case.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.

*People v. Calavano*

**H042950**